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Special Civil Application No 4540 of 95

Date of decision: 17/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYANTIBHAI RAMJIBHAI PATEL vs DIVISIONAL CONTROLLER GSRTC

Appearance:

MR HK RATHOD for Petitioner
MR HS MUNSHAW for Respondent No. 1

Coram : MR.JUSTICE R.BALIA.

ORAL JUDGEMENT

By way of this petition the petitioner has challenged the award of the Labour Court at Ahmedabad dated 8.8.94 passed in Ref.(LCA) No.1925/93. The facts in brief are that while the petitioner was working as conductor at Ahmedabad depot of the respondent corporation and when he was on duty on route from Ranakpur to Ahmedabad his bus was checked and from one group of passengers, the fare was collected which was not accounted for by the petitioner after issuing all the tickets. After holding

inquiry, penalty of dismissal was imposed on the petitioner by the order dated 16.6.93. The Labour Court, on challenge being made to the order of dismissal, found the misconduct to the extent that the passengers were carried without tickets, was proved. But the Labour Court was of the opinion that since no financial loss was caused to the respondent corporation, penalty of dismissal was found to be disproportionate to the misconduct proved. It therefore, ordered to cancel the order of dismissal and to give fresh appointment to the petitioner. Hence this petition.

2. The learned counsel for the petitioner contends that once the dismissal of the petitioner was set aside, he cannot be given fresh appointment order but the petitioner should be given reinstatement with all consequential benefits. On the other hand learned counsel for the corporation contends that while it has been found against the petitioner that the misconduct has been proved in the inquiry, reinstatement with consequential benefits would amount that no punishment has been imposed.

3. The petitioner has confined his prayer before this Court to the extent of substituting the award of reappointment to that or reinstatement without back wages.

4. The contention of the petitioner appears to be correct inasmuch once the order of dismissal has been set aside by holding it to be a punishment disproportionate to the misconduct proved, the course open to the Labour Court was to pass an order for reinstatement with appropriate award of punishment and not an order of fresh appointment. The order in terms would amount dismissal to be accepted and fresh appointment to be given. That would be incongruous to the whole tenor of the award itself. In the circumstances, ends of justice would be met if the award made by the Labour Court on 8.8.94 is modified to the extent that as a result of the cancellation of the order of dismissal. Instead of order of fresh appointment, it is ordered that the petitioner is reinstated in service. However, he shall not be entitled to back wages and shall further be subject to stoppage of 5 grade increments with permanent effect. Order accordingly. No order as to costs.

pl.see the original for correction.

govindan